devolved on them the duty to pass upon the constitutional validity sometimes of legislative and sometimes of executive acts. The duty of determining the constitutionality of an act performed by executive officers has been devolved on this court by the controversy arising in the prosecution of the charge against Jones of the offence of usurpation of office. That duty we now proceed to discharge by adjudging—

First. That the constitutional provisions relating to duelling are not self-executing except to the extent that persons who cannot, or will not, take the constitutional oath, are thereby prevented from holding office.

Second. That a citizen who denies that he is guilty of having violated those provisions, and is willing to take the oath of office, may enter upon and discharge the duties thereof, without subjecting himself to an indictment for usurpation of office, until he has first been indicted, tried and convicted for the disqualifying offence; but that if he takes the oath falsely and corruptly, he may be indicted and prosecuted for the crime thereby committed.

Third. That the statutes regulating the proceedings and prescribing the duties of the Contesting Board in elections for clerk of the Court of Appeals do not empower said board to enter into an original inquiry as to whether the party elected has, by a violation of said constitutional provisions, subjected himself to be deprived of the right to hold office, nor upon their own conviction as to his guilt, to adjudge him not entitled to the office and thereupon to declare it vacant.

Fourth. That the legislature could not, if it had attempted so to do, have conferred such a power upon a board or tribunal composed of executive officers.

Wherefore, upon the whole case, the judgment of the Criminal Court sustaining the demurrer to the indictment must be affirmed.

## ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ALABAMA.[1]

SUPREME JUDICIAL COURT OF MAINE.[2]

COURT OF APPEALS OF MARYLAND.[3]

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[4]

SUPREME COURT OF RHODE ISLAND.[5]

### Abuse of Process.

*Wrongful Attachment—Damages.*—One who sues out an attachment must ascertain at his peril the existence of the facts which authorize its issue. Probable cause for believing the existence of such facts is no defence to a recovery for actual injury occasioned by the wrongful use

[1] From Hon. Thos. G. Jones, Reporter. Cases decided at January Term 1875; the volume in which they will be reported cannot yet be indicated.

[2] From Edwin B. Smith, Esq., Reporter; to appear in vol. 63 Maine Reports.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in vol. 40 Md. Reports.

[4] From John M. Shirley, Esq., Reporter; to appear in 54 N. H. Reports.

[5] From Arnold Green, Esq., Reporter; to appear in 11 Rhode Island Reports.

of the process; but is a material inquiry where vindictive damages are sought to be recovered for a malicious as well as wrongful suing out of the attachment: *Tweedy* v. *Sampson*, S. C. Ala.

In an action for vexatiously, as well as wrongfully, suing out an attachment, where the evidence is conflicting as to the existence of the statutory ground on which it issued, the court having instructed the jury what constitutes a defence to the action, may, without error, instruct the jury if they believe a state of facts testified to, that they may look to them in determining the existence of the fact at issue: *Id.*

Injury to the credit of a defendant in attachment is a legitimate basis for recovery of actual damages, and a charge asserting a contrary proposition, although otherwise correct, should be refused: *Id.*

### Administrator.

*Not liable to Foreign Attachment.*—An administrator is neither "attorney, agent, factor, trustee nor debtor," for purposes of foreign attachment, nor is he liable to process of foreign attachment served on him to attach debts due from the estate in his hands: *Conway* v. *Armington*, 11 R. I.

*Plea against.*—One who has contracted with the personal representative, cannot, when sued by him in the contract, plead *ne unques administrator: Hill Adm'r.* v. *Huckabee*, S. C. Ala.

### Attorney.

*In dealing with Client must use utmost Good Faith.*—An attorney who purchases of a client a claim which is the subject of litigation, in case the propriety of such purchase is questioned, is bound to show the perfect fairness, adequacy and equity of the transaction: *Dunn* v. *Record*, 63 Me.

### Bills and Notes. See *Check.*

*Special Endorsement—Application of Proceeds of Note sent for Collection only.*—A bill of exchange specially endorsed "pay J. C. or order on account of B., G. & S.," was endorsed generally by J. C., sent by him to his correspondents, and paid by the drawees. J. C. failed about an hour before this payment was made, in debt to his correspondents, and this failure was known about an hour after payment made. His correspondents applied the amount of the payment to reducing their claim against J. C. In an action by B., G. & S. against these correspondents to recover the amount of the payment: *Held*, that the special endorsement showed that no consideration had been paid for the bill by J. C.; that it was notice to all subsequent holders that J. C. held the bill in trust for B., G. & S. for collection; that this trust followed the bill, and that neither J. C. nor his endorsees had any property in the bill: *Blaine* v. *Bourne*, 11 R. I.

*Held*, further, that the defendants not having paid the money over to J. C. before hearing of his failure, could not apply it to reducing the debt owed them by J. C.: *Id.*

*Held*, further, that B., G. & S. were the real owners of the bill, and as such entitled to recover: *Id.*

A general endorsement of bills is *primâ facie* evidence of property in the endorsee; but, notwithstanding a general endorsement, paper sent

only for collection will still remain the property of the sender as to all persons having notice: *Id.*

"Short entry," "entering short," explained: *Id.*

*Note for antecedent Debt is primâ facie Security only.*—In Rhode Island giving a note for a precedent debt does not *primâ facie* operate as absolute payment of the debt, but rather as an extension of credit or as only conditional payment; and if the note at maturity is not paid, the right to sue the original debt and enforce its securities revives: *Wilbur* v. *Jernegan*, 11 R. I.

But though *primâ facie* the note has only this effect, yet if it was given and received by the parties as absolute payment or satisfaction, the debt will, upon proof that the note was so given and received, be regarded as paid or satisfied; *Id.*

*Order of Signing—Surety—Delay by Creditor does not discharge.*—The order in which the makers sign a promissory note, of itself creates no presumption of the relation of principal and surety between them: *Summerhill* v. *Tapp*, S. C. Ala.

The true relation of the makers, as between themselves, may be shown by parol, but not to the prejudice of a stranger unless he had notice: *Id.*

Mere passiveness, or delay on the part of the creditor to enforce his legal remedies—*e. g.* as where before levy made he suspends execution—will not discharge the surety: *Id.*

The mere voluntary suspension by the creditor of his legal remedies against the principal, in the absence of any direction to proceed or of any contract with the debtor, will not avail to discharge the surety unless he has been injured thereby: *Id.*

## Check.

*Demand and Notice.*—A check is an appropriation of so much of the maker's funds in the bank upon which it is drawn as is necessary to meet it; hence the maker cannot object to any delay in presenting it, unless he can show special injury to himself arising therefrom: *Emery* v. *Hobson*, 63 Me.

If the maker has withdrawn from the bank his entire deposit against which the check is drawn, he is not injured by any delay in presenting it, or any lack of formal notice of its non-payment, before action brought: *Id.*

## Common Carrier. See *Railroad.*

## Constitutional Law.

*Trial by Jury.*—A statute of the state provided that "when a cause is at issue in the Supreme Court or Court of Common Pleas, if the form of action be *assumpsit*, debt, covenant, or other form of action in any way involving accounts, the court may in its discretion appoint one or more auditors," &c. The statute further provides for a trial by jury on demand, after confirmation of the auditor's report and judgment thereon, "in which trial," the statute proceeds to provide, "the report shall be *primâ facie* evidence of all matters expressly embraced in the order." *Held*, that this statute is void so far as it makes the auditor's report *primâ facie* evidence for the jury, being in conflict with Art. 1, § 15 of the

Constitution of the state, which provides that "The right of trial by jury shall remain inviolate:" *Francis* v. *Baker*, 11 R. I.

*Right vested by Statute of Limitations.*—When a right of defence under the Statute of Limitations has become vested and perfect, any law which afterwards annuls or takes it away is retrospective and unconstitutional: *Rockport* v. *Walden, Ex'r.*, 54 N. H

CONTRACT.

*Illegality of Consideration.*—A statute of the state provides that "all payments or compensations for liquors sold in violation of law, whether in money, labor or personal property, shall be held and considered, as between the parties to such sale, to have been received in violation of law, without consideration, and against equity and good conscience." With this law in force A. agreed to purchase of B. a half interest in a business and stock in trade, a portion of which consisted of liquor illegally kept for sale, and transferred a promissory note for $450 in part payment. A. afterwards repudiated the arrangement and brings suit for the value of the note. *Held*, A. can recover so much of the value of the note as may have been paid for liquor illegally kept for sale, the proportion to be recovered as paid for liquor to be determined by finding the proportional value of the liquor as compared with the rest of the purchase: *McGuinness* v. *Bligh*, 11 R. I.

*Entire Performance— Waiver.*—The non-fulfilment by mutual consent of one item in a contract embracing the performance of several pieces of work, will not defeat the right of a party who is not in default to require a substantial performance of the remainder of the contract, when such non-fulfilment does not affect the essential rights and interests of the contracting parties with regard to those parts of the work which are actually performed: *P. S. & P. R. R. Co.* v. *Grand Trunk R. R. Co.*, 63 Me.

*Rescission for Fraud or undue Influence.*—He who seeks the rescission or cancellation of a contract on the ground of fraud or undue influence, must show his right to relief by distinct and pointed allegations, clearly proved: *Bailey* v. *Litten*, S. C. Ala.

Mere persuasion, unaccompanied by falsehood, undue concealment or by delusive promises or by any violence, duress or constraint, constitutes neither fraud nor undue influence: *Id.*

COURTS.

*State Courts during the War—Judgments valid.*—Judgments, decrees and judicial proceedings, had in the courts of this state, during the late war, are valid and binding in all respects, save where they conflict with the Constitution and laws of the United States, or tend to impair the just rights of citizens thereunder: *Hill, Adm'r.* v. *Huckabee*, S. C. Ala.

COVENANT.

*Specific Performance—Concurrent Remedy at Law and in Equity—Charge on Lands by implication—Agreement to pay Money out of the Proceeds of Sale of Land held to be a Charge on the Land itself, enforceable in Equity by a Sale—"Reasonable Time."*—It does not necessarily follow, because a covenant creates a personal obligation on the cov-

enantor which may be sued on at law, that there may not be also an equitable lien or charge created at the same time: *Johnson* v. *Johnson*, 40 Md.

If a man has power to charge his lands and agrees to charge them, in equity he has actually charged them; and a court of equity will execute the charge: *Id.*

A charge may be created by a fair and reasonable implication, as well as where express words of trust or charge are employed in the covenant or agreement of the parties: *Id.*

T. J. claiming title to land, of which E. M. J. was in possession under an adverse claim, advertised the same for sale. E. M. J. filed a bill for an injunction to restrain the sale. Afterwards the matter was compromised by a written agreement between them under seal, by which it was witnessed, "that the said T. J. doth hereby promise and obligate himself to pay to the said E. M. J. the sum of $2500, in full consideration of all claims or demands whatsoever against the said T. J. The following payments to be made, namely: $500 on or before the expiration of thirty days from the date hereof, and $1000 *out of the first payment made on the sale of the farm, Harmony Grove, and* 1000 *out of the second payment on said farm.* On the part of the said E. M. J., he promises," &c. T. J. paid the first instalment of $500, but failed to pay the balance or to sell the land. On a bill filed against him by E. M. J., to enforce the execution of the above agreement by a sale, it was *held*,

1st. That the agreement must be taken as having created a charge upon the land, and raised a trust in respect thereto, as security for the payment of the plaintiff's debt, and hence he had the right upon failure of the defendant, to perform the trust, to have that trust specifically executed by a decree of a court of equity.

2d. That the money agreed to be paid the plaintiff, out of the proceeds of the sale of the farm, became due and payable after the lapse of a reasonable time, within which the farm could have been fairly sold, and the proceeds of sale realized by the defendant, on the usual and ordinary terms of sale.

3d. That there was no error in the appointment by the court below, of a trustee to make the sale asked for in the bill, instead of requiring the defendant himself to make it in execution of the contract: *Id.*

## Criminal Law.

*Punishment of Husband for Wife's Offence—Evidence—Sale of Liquor.*—The husband may be punished criminally for an indictable offence, not *malum in se*, committed by the wife in his presence and with his knowledge: *Hensley* v. *The State*, S. C. Ala.

Where the husband is sought to be convicted of selling liquor without license, for a sale made by the wife, in his presence and with his knowledge, evidence of similar sales made by her in his presence (although not proof to convict him), is admissible "to illustrate the character of the sale" in the particular case, and to show that it was made by authority of the husband: *Id.*

If the defendant apprehends prejudice from the admission of such evidence, he should not move to exclude it as illegal and irrelevant, but should ask the court to qualify and limit its effect by proper instructions: *Id.*

In the absence of other evidence, testimony of a witness that he "*bought*" the liquor is sufficient to prove a *sale* of it: *Id.*

DAMAGES. See *Abuse of Process.*

*Failure to return Bank-Stock.*—In *assumpsit* for a breach of contract to return borrowed bank-stock on demand; *held*, that the measure of damages is the market value of the stock on the day of demand, with interest: *McKenney* v. *Haines*, 63 Me.

DEBTOR AND CREDITOR. See *Husband and Wife.*

DECEIT.

*For what Misrepresentations it will not lie.*—An action of deceit will not lie upon false representations either as to what a patent right cost the vendor; or was sold for by him; or as to offers made for it; or profits that could be derived from it; or for any mere expressions of opinion of any kind about the property sold: *Bishop* v. *Small*, 63 Me.

DISTRESS.

*Cattle Damage feasant.*—In a town in which there is no pound nor pound-keeper, a person may legally detain in his custody an animal taken upon his premises *damage feasant*, and has a lien upon such animal for expenses necessarily incurred in taking suitable care of it: *Mosher* v. *Jewett*, 63 Me.

EQUITY. See *Covenant; Injunction.*

EVIDENCE. See *Bills and Notes; Husband and Wife; Stamp.*

*Declarations of Party in Possession—Pedigree.*—The declarations of one in possession of real estate are competent to rebut a title set up by or under the person who made them, and are also affirmative evidence of title in the party for whom the person in possession declares that he holds it: *South Hampton* v. *Fowler*, 54 N. H.

Evidence as to pedigree is confined to the declarations of relatives of the family: *Id.*

The declarations of a party's ancestor, since deceased, not in possession, nor claiming title to the premises in question, as to the occupancy or ownership of the premises, are inadmissible: *Id.*

In an action of trespass *quare clausum*, if the jury return a special verdict that the title to that part of the premises described in the declaration upon which the trespass complained of was committed was in the defendant, he will be entitled to a general verdict: *Id.*

*Identification of Premises in a Real Action.*—Where the description of premises in deeds introduced by the demandant corresponds precisely with that contained in his writ, no other proof of identity is necessary: *Rand* v. *Skillen et ux.*, 63 Me.

*Personal Identity—Photography* —Personal identity, like any other fact, may be established by circumstantial evidence; and to that end a large latitude is allowable in the introduction of facts and circumstances slight and insignificant in themselves, where they tend to show the person whose identity is in issue: *Luke* v. *County of Calhoun*, S. C. Ala.

The court will judicially notice the art of photography—the mechanical and chemical process employed, the scientific principles on which it is based, and their results: *Id.*

A photograph shown by the widow to be a good likeness of her deceased husband, and the endorsement thereon, in his handwriting, of his name and the date and place of its execution, are admissible evidence on an issue as to the identity of her husband and the deceased, when offered in connection with the testimony of the photographer that it was the likeness of a man of the same name as the husband, taken at the place and about the time endorsed on it, and the further evidence of a witness, who saw the deceased shortly before and after death, that it was a good likeness of him: *Id.*

## Execution.

*Insurance Money due is attachable though the Goods insured would have been exempt.*—An insurance company will be charged as trustee in execution process when the debt which it owes the principal defendant is solely for the amount due on a policy of insurance upon household furniture, although the furniture at the time of its destruction by fire was exempt from attachment: *Wooster* v. *Page and Trustee*, 54 N. H.

## Foreign Attachment. See *Administrator.*

## Fraud. See *Contract; Deceit.*

## Highway.

*Neglect of City to keep in repair.*—The charter of a company operating cars drawn by horse-power upon tracks laid in the streets of the city of Providence provides that "said corporation shall put all streets and highways, and every portion thereof, over or through which they shall lay any rails, in as good condition as they were before the same were laid; and they shall keep and maintain in repair such portions of the streets and highways as shall be occupied by their tracks, and shall be liable for any loss or injury that any person shall sustain by reason of any carelessness, neglect or misconduct of its agents and servants, in the management, construction or use of said tracks or streets; and in case any damage shall be recovered against said towns or the said city, by reason of any such misconduct, defect or want of repairs, said corporation shall be liable to pay to such towns and city respectively, any sums thus recovered against them, together with all costs and reasonable expenditures incurred by them respectively, in the defence of any such suit or suits, in which recovery may be had; and said corporation shall not encumber any portion of the streets or highways not occupied by said tracks." In an action against the city to recover damages for injuries caused by a defective highway, which was made unsafe by work done by the railroad company on its track:

*Held*, that the city was liable for neglecting to keep its streets safe and convenient for public travel: *Watson* v. *Tripp*, 11 R. I.

*Held*, further, that the duty, resting upon a town or city, to keep its highways safe and convenient, is a public duty, and that it has no power, unless authorized by statute, to divest itself, either by contract or ordinance, of its capacity to discharge this duty: *Id.*

*Semble*, that the liability of the railroad company, as above stated, is a matter which may be considered by the jury in determining whether

or not the city has been guilty of any culpable neglect or want of reasonable care: *Id.*

HUSBAND AND WIFE. See *Criminal Law.*

*A Purchaser from the Wife, of Property transferred to her in prejudice of the Rights of Subsisting Creditors, presumed in the Absence of Proof to the contrary to be a bonâ fide Purchaser without Notice.*—Promissory notes for a debt due to a person who is insolvent, given to the trustee of his wife, and secured by mortgage, constitute a transfer to her in prejudice of the rights of the then subsisting creditors of the husband, and are void as against them so far as she and her trustee are concerned: *Farmers' Bank of Virginia* v. *Brooke, Trustee, &c.*, 40 Md.

But if the notes are subsequently transferred to a third person, he will be entitled to them, and to the mortgage given to secure their payment, unless he received them without consideration, or had knowledge that they were given to the trustee of the wife for an indebtedness due to her husband, and that the transfer of this indebtedness by him to his wife was in prejudice of the rights of his creditors: *Id.*

It is incumbent upon the party assailing such transaction to adduce proof of the real facts, where they do not appear on the face of the notes or mortgage, and to show that the assignee of the notes did not pay value for them, and that he had notice that they were given for a debt due to the husband, and that the transaction was in prejudice of the creditors of the husband, and in the absence of such proof the presumption is that the assignee is the *bonâ fide* holder of the notes for consideration and without notice: *Id.*

*Release of Dower—Consideration—Evidence.*—The wife, as the condition on which she will renounce her right of dower, may require a consideration enuring solely to herself. Failing to exact this, her release will be good if supported by a sufficient consideration moving to the husband alone: *Bailey* v. *Litten, Admr.*, S. C. Ala.

A verbal promise to the husband by one who had purchased his lands at mortgage sale, that if the husband and wife would execute a quit-claim deed to the same land, which was then about to be sold under executions issued in decrees older than the mortgage, the promissor would give the husband better and easier terms of repurchasing or redeeming the land than allowed by law, is a sufficient consideration moving to the husband to support the wife's release of dower in a quit-claim deed properly executed by the husband and wife and duly attested: *Id.*

This consideration may be shown, notwithstanding the deed expressed a nominal consideration in dollars: *Id.*

IDENTITY. See *Evidence.*

INJUNCTION.

*Insufficiency of the Allegations—Full Disclosure of Material Facts required.*—A bill of complaint charged that the complainant was in the lawful possession of certain premises under a lease from one of the defendants; that the complainant was a restaurant keeper, and had expended large sums of money in improving the demised premises for the prosecution of his business, and had set up expensive fixtures which were adapted to the premises, and would become worthless if removed; that by his exertions and expenditures he had given his stand popularity

and reputation, and had attracted a large trade which was yielding him a lucrative compensation; that he had laid in a large stock of liquors, cigars, &c., suitable to his business, and the locality, from which he would receive large profits; that the defendants were about shortly to demolish, and tear down to the ground the building of which the demised premises were a part, and had already begun the work of demolition; that such demolition of the building would work irreparable injury to the complainant, by the destruction of his business, by rendering his expenditures useless, and by depriving him of his benefits, profits, &c. The bill thereupon prayed for an injunction. The injunction was refused, it not sufficiently appearing from the allegations of the bill that the complainant had performed all his obligations under the lease; the averment that he was in possession of the premises under the lease, and had quiet, peaceable possession and occupation of the same, without the further averment that he had performed all the covenants and conditions of the lease incumbent on him, was insufficient. *Johnston* v. *Glenn and Others*, 40 Md.

To warrant the court in issuing an injunction, there must be a full and candid disclosure of all the facts, within the knowledge of the complainant, on which his equity rests—there must be no concealment; all the *res gestæ* must be represented as they actually are: *Id.*

INSURANCE. See *Execution.*

INTOXICATING LIQUORS. See *Contract; Criminal Law.*

JUDGMENT. See *Courts.*

*Conclusiveness against other than Parties.*—The defendant gave a receipt to the plaintiff, a deputy sheriff, for goods attached on a writ against E. Afterwards one H., claiming to be the owner of the property, sued the officer in trover for it, and that suit was finally determined against him. In an action of trover, brought by the officer against the receiptor for the same property: *Held*, that the defendant could not be permitted to show title to the property in H. by way of defence, being concluded therefrom by the judgment in the suit of H. against the plaintiff: *Spear* v. *Hill*, 54 N. H.

LANDLORD AND TENANT.

*Notice to terminate Tenancy.*—A tenement was let by the month, to wit, from December 18th to January 18th. Notice in writing to terminate the tenancy was given by the landlord, and contained a direction to the tenant to vacate on or before January 17th. *Held*, not a legal notice, the day mentioned in it not corresponding with the day of the commencement of the tenancy: *Waters* v. *Young*, 11 R. I.

LIMITATIONS, STATUTE OF. See *Constitutional Law.*

NEGLIGENCE. See *Highway; Railroad.*

PARTNERSHIP.

*When Persons are Partners as between themselves.*—The appellant and appellee, as managers of a Brewing, Malting and Distilling Company,

had charge of all the company's property, and the entire control and general superintendence of all its affairs, including the purchase of whatever was necessary to carry on its business of brewing; paying its debts, and collecting all moneys due it from the sale of beer and other merchandise. For these services the company agreed to pay them five per cent. on all sales of beer or other articles; and by an arrangement between themselves, this commission was divided in the proportion of three per cent. to the appellant and two per cent. to the appellee. They made purchases to very large amounts in the name of *Barth & Heise*, paid bills rendered to them in that firm name, and gave their joint and several notes, signed in their individual names, to raise money and to pay parties from whom they made purchases. *Held*, That the business in which the parties were engaged, was one in which a partnership might exist, and it might be inferred from their acts and conduct; *held also* that it was clear a partnership existed between them: *Heise* v. *Barth*, 40 Md.

PHOTOGRAPHY. See *Evidence*.

PLEADING. See *Administrator*.

*Plea puis darrein continuance—Repugnancy.*—If, after a plea in bar, the defendant pleads a plea *puis darrein continuance*, this is a waiver of his plea in bar, and he shall take no advantage of anything in the bar in that case: *True* v. *Huntoon*, 54 N. H.

But such plea *puis darrein continuance* may be properly pleaded with the general issue, either specially or by brief statement, when no plea has been previously pleaded: *Id.*

The fact that two or more pleas, when pleaded at the same time, are repugnant to each other, is no objection to either of them: *Id.*

RAILROAD COMPANY.

*Defendant Corporation not liable for Management of its Road while leased.*—By virtue of their lease of the Atlantic and St. Lawrence Railroad the Grand Trunk Railway Company, for certain purposes, became owners of the road leased *pro hac vice*, and while the lessees operate that road under their lease, the lessors are not liable under their charter or the statutes of the state, for an injury sustained thereon by a passenger, caused by the wrongful acts of the agents or servants of the lessees toward him: *Mahoney* v. *Atlantic & St. Lawrence Railroad Co.*, 63 Me.

Nor is there, in such case, any privity, either of contract or by implication of law, between the passenger and the lessors as common carriers of passengers, by which they are rendered liable for such an injury: *Id.*

The remedy of the passenger, for an injury thus caused, is against the lessees who had the exclusive use, care, direction and control of the road, whose agent the alleged wrongdoer was, and with whom alone the passenger contracted: *Id.*

STAMP.

*Unstamped Receipt admitted in Evidence.*—An instrument not stamped as required by the Acts of Congress of the United States is properly admissible in evidence at a trial before the courts of this state, where the maker testifies that the stamp was omitted without any fraudulent intent on his part: *Emery* v. *Hobson*, 63 Me.

SET-OFF. See *Vendor and Purchaser.*

SURETY. See *Bills and Notes.*

TOWN. See *Highway.*

TRESPASS. See *Evidence.*

VENDOR AND PURCHASER.

*Suit by Vendor—Set-off.*—It is a good defence to a suit on a note given for the purchase-money of land to which the vendor bound himself to convey title on payment, that the purchaser at the request of the vendor, after tender, and demand for conveyance, deposited the amount due with a third person to be paid over when a conveyance was executed: *Eads* v. *Murphy*, S. C. Ala.

Whenever the vendee can maintain a cross-action at law, because of matters arising out of the contract of purchase, or because of the vendor's breach of the obligations of the contract, and the damages recoverable are fixed by a legal standard, such damages may be insisted on by way of set-off: *Id.*

*Vendor acting in Good Faith, required to make a proportional Abatement in the Purchase-money, for a Deficiency in the lot of Ground sold, and the Sale ratified.*—The appellees, as administrators, sold under an order of the Orphans' Court, to the appellant, certain leasehold property, which was described in the advertisement by which the sale was made, as "a lot of ground fronting on Addison street, fifty feet, with an even depth of one hundred and twenty-three feet, improved by three two-story brick houses, each with a front of twelve and a half feet, also a two-story brick stable, twenty-five by fifty feet, together with three frame stables." After the sale, which was reported to, and ratified by, the Orphans' Court, the purchaser discovered that while the lot had a front of fifty feet on Addison street, and was a hundred and twenty-three feet deep, it was only forty feet wide in the rear, thus leaving on one side a small wedge-shaped deficiency; he thereupon applied to the court for a rescission of the sale upon the ground, among others, of this deficiency, as being a material variance as to size and character, between the lot as represented, and as existing by actual measurement. None of the buildings were on the deficiency, and the purchaser was on the premises, and examined, or had an opportunity of examining them before he purchased. The court allowed a proportionate abatement from the purchase-money for the deficiency, but refused to rescind the sale. On appeal by the purchaser, this action of the court was affirmed: *Carmody* v. *Brooks*, 40 Md.

VERDICT.

*Informality of—Declarations of Foreman in presence of the others.*—When the jury return an informal verdict, the answer of the foreman to inquiries by the court as to what they intended to include in their verdict, made in presence of the whole panel and without objection from any juror, will be taken as the answer of the jury: *South Hampton* v. *Fowler*, 54 N. H.